

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation,)
Vermont Electric Cooperative, Inc., and Vermont)
Electric Power Company, Inc. for a certificate of public)
good, pursuant to 30 V.S.A. Section 248, to construct up)
to a 63 MW wind electric generation facility and)
associated facilities on Lowell Mountain in Lowell,)
Vermont, and the installation or upgrade of)
approximately 16.9 miles of transmission line and)
associated substations in Lowell, Westfield, and Jay,)
Vermont)

Order entered: 10/7/2011

PROTECTIVE ORDER REGARDING COMPLIANCE FILING

I. INTRODUCTION

On September 20, 2011, Green Mountain Power Corporation ("GMP"), on behalf of itself and Vermont Electric Power Company, Inc. and Vermont Transco LLC (together, "VELCO"), filed a Motion for Confidential Treatment of Draft SIS Submitted as Post-CPG Compliance Filing concerning portions of the draft System Impact Study QP 311/QP 367 — Wind Project July 2011 ("Draft SIS"). Specifically, GMP alleges that the redacted passages of the Draft SIS contain Critical Energy Infrastructure Information ("CEII").¹ GMP submitted an averment to support its request for confidentiality. No party opposed GMP's Motion.

1. The Federal Energy Regulatory Commission ("FERC") defines CEII as:
Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure.

II. DISCUSSION

We have reviewed the motion and supporting materials, and conclude that GMP has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant GMP's motion for a protective order.

To promote full public understanding of the basis for its decisions, the Public Service Board ("Board") has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.² Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.³ However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal. In determining whether to protect confidential information, we consider four issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Does the matter sought to be protected contain CEII?
- (3) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?

2. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("Entergy Docket"), Order of 11/9/01 at 5-6.

3. *Id.* at 6.

(4) Has the party seeking protection shown "good cause" for invoking the Board's protection?⁴

GMP asserts that certain portions of the Draft SIS on pages 2, 6, 7, 11, 12, 14, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, and 30 should be kept confidential for the followings reasons:

(1) The portions of the Draft SIS at issue contain information revealing in detail the impacts of the Kingdom Community Wind Project ("KCW Project") on the bulk transmission system under various contingencies. The Draft SIS is intended to identify system weaknesses, or vulnerabilities that occur once the KCW Project is placed into service. This information therefore falls within the definition of CEII because it constitutes: "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure."⁵

(2) Release of the specific information and locations of vulnerable assets listed in the Draft SIS would enable a third party wishing to do harm to severely damage critical electric system assets.

(3) For this reason, FERC has established formal procedures for the management, consistent treatment of, and restrictions on access to, CEII.⁶

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that GMP has made a prima facie showing that the subject information falls within the FERC definition of CEII. FERC began limiting public access to CEII in October of 2001, in response to the terrorist attacks of September 11, 2001, with the issuance of Treatment of Previously Public Documents, Docket No. PL02-1-000, 97 F.E.R.C. 61,030 (2001).

4. See, e.g., *Entergy Docket*, Order of 3/29/02 at 2.

5. 18 C.F.R. § 388.113.

6. These include but are not limited to FERC Orders Nos. 630, 630-A, 643, 662, 702, and 890, as well as 18 C.F.R. §§ 388.112 and 388.113.

FERC has since issued a series of subsequent orders that establish formal procedures for the management and consistent treatment of, and restrictions on access to, CEII (including but not limited to Orders No. 630, 630-A, 643, 662, 702 and 890).⁷

Because GMP has made a prima facie showing that the redacted information is CEII, the information warrants confidential treatment. Therefore, we grant GMP's motion for confidential treatment of the information.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by Petitioners (as described in the Petitioners' Motion) shall be treated in this proceeding as follows:

1. All documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board.

Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of July 8, 2010, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall

7. FERC procedures for the management of CEII are also found at 18 C.F.R. §§ 388.112 and 388.113.

start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

5. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

SO ORDERED.

Dated at Montpelier, Vermont this 7th day of October, 2011.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/David C. Coen</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 7, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)